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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
Arlie & Company,  
Debtor.

Case No. 10-60244-aer11  
RESPONSE TO APPLICATIONS TO  
EMPLOY (1) BALL JANIK, LLP,  
AND (2) PACHULSKI STANG ZIEHL &  
JONES, LLP

Hearing Date: October 20, 2010  
Hearing Time: 11:00 a.m.  
Hearing Location: Courtroom 5  
405 East Eighth Avenue  
Eugene, Oregon 97401

Umpqua Bank ("Umpqua"), a creditor herein, hereby responds to the applications to employ Ball Janik, LLP (Dkt. No. 269) and Pachulski Stang Ziehl & Jones, LLP (Dkt. No. 272) (collectively, the "Applications") as follows:

Umpqua does not object to debtor retaining Ball Janik, LLP, and Pachulski Stang Ziehl & Jones, LLP, provided the retention and payment of debtor's attorneys is in accordance

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with the United States Bankruptcy Code and applicable federal and local rules and practices and that the funds used to pay the fees and costs of such attorneys is not from the cash collateral of Umpqua unless Umpqua has consented or the court has found that Umpqua has received adequate protection for such payment.<sup>1</sup>

The Applications, however, do not appear to be in conformance with local practice for the several reasons. First, the Applications were filed on October 8, 2010. Both Applications request that they be effective *nunc pro tunc* to September 28, 2010. Absent exceptional circumstances, orders authorizing appointment of counsel will be effective as of the date the application is filed. See, e.g., In re Atkins, 69 F3d 970 (9<sup>th</sup> Cir 1995) (holding that retroactive employment of a professional should only be granted in exceptional circumstances: where there is a satisfactory explanation for the delay and the professional shows that he or she has benefitted the estate in some significant manner during the delay).

In addition, in light of In re Jore Corp., 298 BR 703 (Bankr D Mont 2003), copies of the following documents, if the exist, should be provided to the court and interested parties: (1) the engagement letter, (2) any conflict waiver letters from debtor or other clients pertaining to this case, and (3) the guaranty from debtor's principals.<sup>2</sup>

Provided that the additional information described above is provided to the court and interested parties (and no objection is raised because of such additional information) and provided that the order authorizing employment is *nunc pro tunc* to the date the Applications were filed, Umpqua has no objection to the Applications.

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<sup>1</sup> Umpqua's response to the rates proposed by counsel is addressed in the Response to Debtor's Motion for Determination that Proposed Nonlocal Bankruptcy Counsel's Fees are consistent with Local Rule 2016-1(b)(4), which is being filed contemporaneously herewith.

<sup>2</sup> It should be noted that a guaranty from debtor's principal, if it is allowed to continue, may cause the professional to no longer be disinterested. See, e.g., ORCP 1.8(f) (governing conflicts raised where third party is making payment on behalf of client); and In re Hathaway Ranch Partnership, 116 BR 208, 219 (Bankr C.D. Cal 1990) ("Thus by accepting payment from a third party, the proposed counsel for the debtor in possession necessarily has a conflict of interest in that counsel is serving two masters—those who paid counsel and the one counsel is paid to represent.")

Dated this 18<sup>th</sup> day of October, 2010.

MILLER NASH LLP

*/s/ John Casey Mills*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of October, 2010, I electronically filed the Response to Applications to Employ (1) Ball Janik, LLP, and (2) Pachulski Stang Ziehl & Jones, LLP, with the Clerk of the Court using the **CM/ECF** system, which will send notification of such filing to:

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Executed at Portland, Oregon, this 18<sup>th</sup> day of October, 2010.

*/s/ John Casey Mills*

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